

1 Jack Silver, Esq. SB# 160575
2 LAW OFFICE OF JACK SILVER
3 708 Gravenstein Highway North, #407
4 Sebastopol, CA 95472-2808
5 Tel. (707) 528-8175
6 Email: jsilverenvironmental@gmail.com

7 David J. Weinsoff, Esq. SB# 141372
8 LAW OFFICE OF DAVID J. WEINSOFF
9 138 Ridgeway Avenue
10 Fairfax, CA 94930
11 Tel. (415) 460-9760
12 Email: david@weinsofflaw.com

13 Attorneys for Plaintiff
14 California River Watch

15 UNITED STATES DISTRICT COURT

16 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

17 CALIFORNIA RIVER WATCH, an
18 IRC Section 501(c)(3), non-profit,
19 public benefit corporation,

Case No.: 2:17-cv-05896-CAS (RAOx)

20 Plaintiff,

~~PROPOSED~~ **CONSENT DECREE**

21 v.

(Environmental – Clean Water Act 33
U.S.C. § 1251 *et seq.*)

22 MALIBU BAY CLUB and VENTURA
23 REGIONAL SANITATION DISTRICT,

Trial Date: None

24 Defendants.
25 _____/

26 WHEREAS, on August 9, 2017, California River Watch (“CRW”) filed its
27 Complaint in this Court in the above-titled action asserting it is an Internal Revenue
Code section 501(c)3 nonprofit, public benefit corporation organized under the laws
of the State of California, dedicated to protecting, enhancing, and helping to restore
the surface waters and ground waters of California, including coastal waters, rivers,
creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora
and fauna, and to educating the public concerning environmental issues associated
with these environs;

WHEREAS, the Complaint alleges Defendants own and operate a collection

1 system treatment facility, and leach lines (collectively “the Facility”) for the purpose
2 of collecting and conveying for treatment wastewater from the Malibu Bay Club,
3 subject to various federal and state regulatory requirements under the federal Water
4 Pollution Control Act, 33 U.S.C. §§1251 *et seq.* (“Clean Water Act” or “CWA”);

5 WHEREAS, on January 12, 2017, CRW served Defendants, the United States
6 Environmental Protection Agency (“EPA”), EPA Region IX, the Executive Director
7 of the State Water Resources Control Board (“State Board”) and the Executive
8 Director of the Los Angeles Regional Water Quality Control Board (“Regional
9 Board”) with a 60-day Notice of Violations and Intent to File Suit (“Notice Letter”
10 or “Notice”) alleging various violations of the CWA relating to the collection
11 system;

12 WHEREAS, On January 11, 2001, the Regional Board issued Order No. 01-
13 008 containing the Waste Discharge Requirements (“WDR”) that permitted the
14 Facility. Order No. 01-008 also rescinded Regional Board Order No. 94-136
15 (December 5, 1994), except for enforcement of Order No. 94-136. The WDR for the
16 Facility was subsequently extended by the Regional Board in 2006, 2011, and 2016.
17 Defendant Ventura Regional Sanitation District (the “District”) has continuously
18 operated the Facility since 2005. The District has operated the Facility within the
19 parameters contained in the WDR from 2005 to the present. As part of these
20 operations, the District has monitored the constituent levels in the wastewater
21 effluent discharged from the Facility to the groundwater and self-reported all
22 exceedances of limits set forth in the WDR to the Regional Board. The District has
23 cooperated with the Regional Board at all times during its operation of the Facility
24 and filed all necessary reports and other documentation called for by the WDR. On
25 or about February 22, 2017, the Regional Board issued a Notification of Violation
26 (“NOV”) to the District alleging the same or similar violations of the subject WDR
27

1 as CRW alleged in its Notice Letter. The District provided formal response to the
2 Regional Board NOV on April 24, 2017 and it was subsequently determined that the
3 Regional Board would not file an Administrative Civil
4 Liability Complaint against the District for this NOV, but would accept the District's
5 formal response to the NOV as adequate under the facts and circumstances of the
6 alleged violations.

7 WHEREAS, the District denies all of CRW's allegations that it is liable for
8 any claims that were, or could have been, asserted against the District based upon
9 the Notice Letter;

10 WHEREAS, the parties have expended effort and resources in investigating
11 and evaluating allegations and claims set forth in the Notice Letter, including the
12 exchange of information regarding the collection system, as well as engaging in a
13 negotiation and technical dialogue regarding settlement;

14 WHEREAS, the parties now wish to resolve and settle all disputes,
15 obligations, and purported or actual claims or causes of action, which may exist by
16 and between CRW and the District, including without limitation any disputes,
17 obligations, claims and/or causes of action that were or could have been asserted in
18 or pursuant to the Notice Letter and have tentatively reached a settlement;

19 WHEREAS, the parties have agreed that it is in their mutual interest to enter
20 into a Consent Decree setting forth terms and conditions appropriate to resolving the
21 allegations set forth in the Complaint without further proceedings.

22 **NOW, THEREFORE, IT IS HEREBY STIPULATED BETWEEN THE**
23 **SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT**
24 **AS FOLLOWS:**

25 1. The Court has jurisdiction over the subject matter of this action pursuant
26 to 28 U.S.C. §1331 (federal question), and 33 U.S.C. §1365(a) (CWA citizen suit
27

jurisdiction).

2. Venue is appropriate in the Central District Court pursuant to 33 U.S.C. §1365(c)(1), because the alleged violations purportedly occurred within this District. Venue is also proper because the District is located, and the alleged events or omissions giving rise to CRW's claims allegedly occurred in this District. 28 U.S.C. §1391(b)(1),(2).

3. The Complaint is styled as a Complaint for Injunctive Relief, Civil Penalties and Declaratory Relief (Environmental-Clean Water Act 33 U.S.C. §1251, *et seq.*).

4. The Court shall retain jurisdiction over this matter for five years for purposes of interpreting, modifying or enforcing the terms of this Consent Decree, or as long thereafter as is necessary for the Court to resolve any motion to enforce this Consent Decree.

I. OBJECTIVES

It is the express purpose of the parties entering into this Consent Decree to further the objectives set forth in the CWA and to resolve those issues alleged by CRW in its Complaint. In light of these objectives and as set forth fully below, the District and CRW agree to comply with the provisions of this Consent Decree.

II. COMMITMENTS OF THE DISTRICT

A. ACTIONS BY THE DISTRICT

The District shall perform the below-specified acts. The District reserves the right, in its sole discretion, to determine: (i) which persons shall perform any acts described herein, including contractors; and (ii) the scope and technical details of, and the manner to implement, such work subject to review and approval by the State Board or Regional Board. In the event any provision of this section conflicts with requirements imposed by the State Board or Regional Board such that provisions

1 required by this Consent Decree and those by the State or Regional Board are
2 incompatible (with incompatible meaning that compliance with the requirements of
3 this Consent Decree would directly interfere with or prevent the District from
4 complying with State or Regional Board requirements), then the agency
5 requirements shall prevail over conflicting provisions in this section. The District
6 shall:

7 A.1. Prior to the Termination Date of this Consent Decree, and consistent
8 with the provisions detailed in the letter to the State Board dated April 24, 2017,
9 attached to this Consent Decree and incorporated herein, take reasonable actions
10 to eliminate any exceedances of the current WDRs.

11 A.2. In the event the District employs chlorination into its "treatment train,"
12 request revised WDRs applicable to the District be adopted by the Regional
13 Board to add a sampling requirement for disinfection by-products.

14 A.3. Within one (1) year after the Effective Date of this Consent Decree,
15 contract for and complete an "efficiency study" for the "treatment train,"
16 conducted by an engineering and/or water quality consulting firm, demonstrating
17 that the District's operations at the Facility will comply with applicable WDRs
18 during the five (5) year period following the Effective Date of this Consent
19 Decree. The District shall provide a copy of the study to CRW within thirty (30)
20 days after receipt.

21 **B. FEES AND COSTS**

22 5. Within ten (10) calendar days after the Effective Date of this Consent
23 Decree and approval by the Court, the District shall mail CRW the sum of Fifty
24 Thousand dollars (\$50,000.00). Payment shall be made to CRW in the form of a
25 single check payable to "California River Watch" and mailed to the Law Office of
26 Jack Silver, 708 Gravenstein Highway North, # 407, Sebastopol, CA 95472. Said
27

1 payment shall constitute full and complete satisfaction of all costs of litigation and
2 attorneys' fees incurred by CRW that have or could have been claimed in connection
3 with this matter up to and including the Effective Date of the Consent Decree, and
4 for CRW's expert and attorneys' fees and costs for monitoring and enforcing the
5 District's compliance with the ongoing obligations under this Consent Decree up to
6 and including the Termination Date.

7 **III. COMMITMENTS OF CRW**

8 6. Within three (3) days of the final signature of this Consent Decree by the
9 parties, CRW shall file a Notice of Settlement and Notice of 45-Day Review in the
10 United States District Court for the Central District of California ("District Court").

11 7. CRW shall submit this [Proposed] Consent Decree to EPA and the U.S.
12 Department of Justice ("DOJ") within three (3) days of obtaining parties' attorneys
13 signatures approving as to form (with client signatures to follow), or at the latest
14 three (3) days after the final signatures of the parties, consistent with 40 C.F.R. §
15 135.5. The agency review period expires forty-five (45) days after receipt by both
16 agencies, as evidenced by the certified return receipts, copies of which shall be
17 provided to the District if requested. In the event that EPA or DOJ object to entry of
18 this [Proposed] Consent Decree, the parties agree to meet and confer to attempt to
19 resolve the issue(s) raised by EPA or DOJ.

20 8. CRW shall file this Consent Decree with the District Court within three
21 (3) days after the Effective Date. CRW is responsible for notifying the District of
22 the District Court's entry of the Order dismissing these claims with prejudice. Such
23 notification can be satisfied by the Central District of California's Case
24 Management/Electronic Case Filing ("CM/ECF") notification to the parties that the
25 Order was executed and entered by the District Court.
26
27

1 **IV. EFFECTIVE DATE AND TERMINATION DATE**

2 9. The term “Effective Date,” as used in this Consent Decree, shall mean the
3 date on which the parties receive notice that the District Court approved the fully
4 executed Consent Decree.

5 10. The “Termination Date” of this Consent Decree is the date that all of the
6 requirements under Section II are completed by the District or five (5) years from
7 the date of full execution and court approval of this Consent Decree, whichever is
8 earlier.

9 **V. DISPUTE RESOLUTION**

10 11. This Court shall retain jurisdiction over this matter for five (5) years for
11 the purposes of implementing and enforcing the terms and conditions of this Consent
12 Decree, and adjudicating all disputes among the parties that may arise under the
13 provisions of this Consent Decree. The Court shall have the power to enforce this
14 Consent Decree with all available legal and equitable remedies.

15 12. Any disputes between CRW and the District concerning any alleged
16 breach of this Consent Decree shall be subject to the following dispute resolution
17 procedures. Failure to satisfy the payment condition in Section II is a substantial
18 breach of this Consent Decree and relieves CRW of its obligations under this
19 Consent Decree:

- 20 a. Good Faith Negotiations. CRW and the District shall make good faith
21 efforts to resolve informally any alleged breach of the Consent Decree.
22 If informal efforts to resolve the alleged breach are unsuccessful, that
23 Party shall provide written notice of the alleged breach and that Party’s
24 intent to initiate the dispute resolution procedure of this Section. The
25 notice shall include a recitation of all facts and circumstances giving
26 rise to the dispute, including the particular provisions of the Consent
27 Decree alleged to have been breached.

1 b. Mediation. If the dispute is not resolved by the Parties within thirty (30)
2 days after such notice is given, such dispute shall be submitted to
3 mediation before a mutually agreeable neutral mediator. The parties
4 shall each bear their own costs and attorney's fees incurred in
5 connection with such mediation.

6 c. Waiver. By agreeing to these dispute resolution provisions, the parties
7 understand that they are waiving certain important rights and
8 protections that otherwise may have been available to each of them if a
9 dispute between them were determined by judicial action including,
10 without limitation, the right to a jury trial, and certain rights of appeal.
11 Other than the remedies contained within this Consent Decree
12 including dispute resolution and specific performance of the terms of
13 this Consent Decree, there are no other remedies. The parties
14 specifically agree that there is no basis within this Consent Decree or
15 within the contemplation of the Parties to support a claim for
16 consequential damages due to any form of breach.

17 **VI. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

18 13. Release. It is the intent of the parties that the execution of this Consent
19 Decree constitutes a full and complete satisfaction of all rights, claims and demands
20 by CRW against the District with respect to any and all allegations and claims made
21 in the Notice Letter and the Complaint under the Clean Water Act concerning the
22 Facility. CRW on behalf of itself and any and all of its agents, representatives,
23 successors, members, and assigns, except as otherwise provided for herein does
24 hereby absolutely, fully and forever release, relieve, remise and discharge the
25 District and its past and present employees, officers, directors, attorneys, and the
26 predecessors, successors, and assigns of any of them, from all causes of actions,
27 claims, damages (including punitive damages), demands, debts, actions, attorneys'

1 fees, costs of suit, and liabilities of every kind or nature whatsoever, arising
2 exclusively out of the specific claims asserted in the Notice Letter under the Clean
3 Water Act concerning the operation of the Facility. The release provided for herein
4 shall be valid and effective whether the claims, causes of action, or liability hereby
5 released (i) were known or unknown, suspected or unsuspected, (ii) were based in
6 contract, tort, statute, or otherwise, or (iii) arise at law or in equity. The release shall
7 survive the termination of this Consent Decree, whether by satisfaction of the terms
8 and conditions hereof or operation of law.

9 14. Covenant Not to Sue. For the period beginning on the Effective Date
10 and ending after five (5) years, CRW agrees that neither CRW, its officers, executive
11 staff, members of its governing board nor any organization under the control of
12 CRW, its officers, executive staff, or members of its governing board, will file any
13 lawsuit against the District seeking relief for alleged violations of the Clean Water
14 Act. CRW further agrees that, beginning on the Effective Date and ending after five
15 (5) years, CRW will not actively support other lawsuits by providing financial
16 assistance, personnel time or other affirmative actions against the District that may
17 be proposed by other groups or individuals who would rely upon the citizen suit
18 provision of the Clean Water Act to challenge the District's compliance with the
19 Clean Water Act. This Not to Sue provision shall survive the termination of this
20 Consent Decree. This Not to Sue provision shall not affect either party's right to
21 enforce this Consent Decree.

22 **VII. MISCELLANEOUS PROVISIONS**

23 15. No Admission. The Consent Decree is the direct result of a compromise
24 of disputed allegations and claims. As such, this Consent Decree shall not, for any
25 purpose, be considered as an admission of liability by the District, nor shall the
26 payment of any sum of money in consideration for the execution of this Consent
27

1 Decree constitute or be construed as an admission of any liability by the District,
2 which expressly denies any such liability or wrongdoing.

3 16. Delays in Schedule Implementation. In the event implementation by the
4 District of the remedial measures set forth Section II of this Consent Decree does
5 not occur by the agreed to dates, despite the timely good faith efforts of the District
6 to acquire any necessary approvals and/or permits, or due to factors unforeseen at
7 the time this Consent Decree was entered into, the District agrees to notify CRW in
8 writing as soon as practicable after the anticipated delay becomes apparent, and in
9 any case except in a case of force majeure described below, not less than twenty (20)
10 days prior to any deadline set forth in Section II, and shall describe the reasons for
11 the anticipated delay

12 17. Force Majeure. The District shall not be deemed in default or breach of
13 this Consent Decree by reason of any event which constitutes a force majeure. For
14 purposes of this Consent Decree, a force majeure is defined as any event arising from
15 causes beyond the reasonable control of the District or its contractors that delay or
16 prevents performance. This includes, without limitation, acts of God, acts of war,
17 acts of terrorism, fire, explosion, extraordinary weather events, restraint by court
18 order or public authority, or other causes beyond the District's reasonable control.
19 Neither increased costs nor economic hardship shall constitute a force majeure.

20 18. Notices. All notices, consents, approvals, requests, demands and other
21 communications (collectively, "Notice") which the parties are required or desire to
22 serve upon or deliver to the other shall be in writing and shall be given by nationally
23 – recognized overnight courier, by certified United States mail, return receipt
24 requested, postage prepaid, addressed as set forth below, or by electronic mail
25 addressed as set forth below:
26
27

1 If to CRW: Jack Silver, Esq.
2 Law Office of Jack Silver
3 708 Gravenstein Highway North # 407
4 Sebastopol, CA 95472
5 Tel: (707) 528-8175
6 Email: jsilverenvironmental@gmail.com

7 If to the District: Robert N. Kwong, Esq.
8 Arnold LaRochelle Mathews VanConas & Zirbel LLP
9 300 Elplanade Drive / Suite 2100
10 Oxnard, CA 94036
11 Tel: (805) 988-9886
12 Email: rkwong@atozlaw.com

13 The foregoing addresses may be changed by Notice given in accordance with
14 this Section. Any Notice sent by mail shall be deemed received two (2) days after
15 the date of mailing. Any Notice sent by electronic mail shall be deemed received
16 upon electronic transmission thereof provided sender does not receive electronic
17 notice of non-delivery. Any Notice sent by overnight courier service shall be deemed
18 received on the day of actual delivery as shown by the confirmation of delivery by
19 the messenger or courier service. If the date of receipt of any Notice to be given
20 hereunder falls on a weekend or legal holiday, then such date of receipt shall
21 automatically be deemed extended to the next business day immediately following
22 such weekend or holiday for purposes of calculating time periods commencing upon
23 the date of service.

24 19. Attorneys' Fees. Other than the payment to CRW under Section II (B),
25 each party shall bear its own past and future attorneys' fees and costs relating to the
26 subject matter of this Consent Decree.

27 20. Parties' Acknowledgment of Terms. This Consent Decree has been
carefully and fully read and reviewed by CRW, the District, and their respective

1 counsel, if any, who hereby represent that the contents of this Consent Decree are
2 understood, and agree that this Consent Decree is binding on each party or its
3 respective predecessors, successors, and assigns and as described above.

4 21. Interpretation and Applicable Law. This Consent Decree shall be
5 construed and interpreted in accordance with the laws of the United States and the
6 State of California without regard to principles of conflicts of law. This Consent
7 Decree shall be interpreted and construed as a whole, according to its fair meaning
8 and not strictly for or against any party, and without regard to which party drafted
9 the Consent Decree. All of the promises, representations, and warranties contained
10 in this Consent Decree survive the execution of this Consent Decree.

11 22. No Assignments. Each party to this Consent Decree represents and
12 warrants that it has not assigned, transferred, hypothecated, or sold to any third
13 person or entity, any of the rights or obligations released by or entered into under
14 this Consent Decree.

15 23. Counterparts. This Consent Decree may be executed in multiple
16 counterparts by the attorneys and parties, each of which shall evidence one and the
17 same agreement.

18 24. Headings. The headings used in this Consent Decree are for convenience
19 of reference and shall not be used to define any provision.

20 25. Entire Consent Decree in Writing. This Consent Decree constitutes the
21 entire agreement between the parties hereto with respect to the subject matter set
22 forth herein and supersedes all previous or contemporaneous negotiations,
23 commitments (oral or written), and writings with respect to the subject matter set
24 forth herein.

25 26. Modification or Amendment. This Consent Decree or any of its
26 provisions may be modified or amended only by written agreement executed by all
27 parties to this Consent Decree.

1 27. Severability. The invalidity or unenforceability of any provision of this
2 Consent Decree shall in no way affect the validity or enforceability of any other
3 provision. If, in any action before any court or other tribunal or competent
4 jurisdiction, any term, restriction, covenant, or promise is held to be unenforceable
5 for any reason, then such term, restriction, covenant, or promise shall be deemed
6 modified to the extent necessary to make it enforceable by such court or other
7 tribunal and, if it cannot be so modified, that this Consent Decree shall be deemed
8 amended to delete here from such provision or portion adjudicated to be invalid or
9 unenforceable, and the remainder of this Consent Decree shall be deemed to be in
10 full force and effect as so modified. Any such modification or amendment in any
11 event shall apply only with respect to the operation of this Consent Decree in the
12 particular jurisdiction in which such adjudication is made.

13 28. Representations and Warranties. This Consent Decree is given
14 voluntarily, free of undue influence, coercion, duress, menace, or fraud of any kind.
15 No party, nor any officer, agent, employee, representative, or attorney of or for any
16 party, has made any statement or representation to any other party regarding any fact
17 relied upon in entering this Consent Decree, and no party is relying upon any
18 statement, representation, or promise of any other party, nor of any officer, agent,
19 employee, representative, or attorney of or for any party, in executing this Consent
20 Decree or in making the settlement provided herein, except as expressly stated in
21 this Consent Decree.

22 29. No Third Party Beneficiaries. This Consent Decree is not intended to
23 confer any rights or obligations on any third party or parties, and no third party or
24 parties shall have any right of action under this Consent Decree for any cause
25 whatsoever. Subject only to the express restrictions contained in this Consent
26 Decree, all of the rights, duties and obligations contained in this Consent Decree
27

1 shall inure to the benefit of and be binding upon the Parties, and their successors and
2 assigns.

3 30. Authority. Each of the persons signing this Consent Decree on behalf of
4 an entity represents and warrants that he or she has actual authority and capacity to
5 execute the Consent Decree on behalf of the entity and to bind it to all of the terms
6 of this Consent Decree.

7 **IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree
8 as of the date first set forth below.

9 **APPROVED AS TO FORM:**

10 Dated: LAW OFFICE OF DAVID J. WEINSOFF

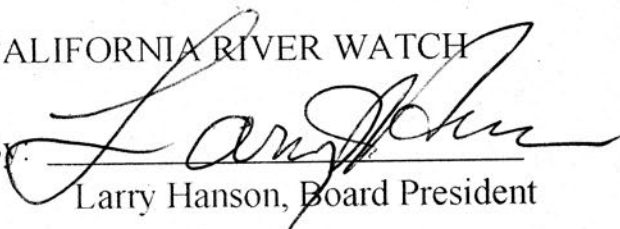
11
12 By: _____
13 David J. Weinsoff
14 Attorney for Plaintiff
California River Watch

15 Dated: ARNOLD LAROCHELLE MATHEWS
16 VANCONAS & ZIRBEL LLP

17
18 By: _____
19 Robert N. Kwong
20 Attorney for Defendant
Ventura Regional Sanitation District

21 **SO STIPULATED:**

22 Dated: 12/21/2017

23 CALIFORNIA RIVER WATCH
24 By: 
25 Larry Hanson, Board President

26 //
27

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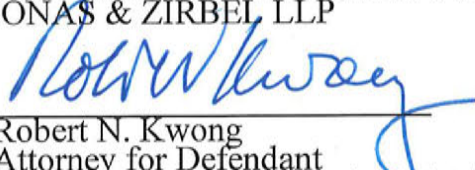
9 **APPROVED AS TO FORM:**

10 Dated: LAW OFFICE OF DAVID J. WEINSOFF

11 By: _____
12 David J. Weinsoff
13 Attorney for Plaintiff
14 California River Watch

15 Dated: 12/27/2017

16 ARNOLD LAROCHELLE MATHEWS
17 VANCONAS & ZIRBEL LLP

18 By: 
19 Robert N. Kwong
20 Attorney for Defendant
21 Ventura Regional Sanitation District

22 **SO STIPULATED:**

23 Dated: CALIFORNIA RIVER WATCH

24 By: _____
25 Larry Hanson, Board President

26 //
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6 of this Consent Decree.

7 **IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree
8 as of the date first set forth below.

9 **APPROVED AS TO FORM:**

10 Dated: 12/25/17

LAW OFFICE OF DAVID J. WEINSOFF

11 By: 
12 David J. Weinsoff
13 Attorney for Plaintiff
14 California River Watch

15 Dated:

ARNOLD LAROCHELLE MATHEWS
VANCONAS & ZIRBEL LLP

17 By: _____
18 Robert N. Kwong
19 Attorney for Defendant
20 Ventura Regional Sanitation District

21 **SO STIPULATED:**

22 Dated:

CALIFORNIA RIVER WATCH

24 By: _____
25 Larry Hanson, Board President

26 //

1 Dated:

VENTURA REGIONAL SANITATION
DISTRICT

2
3 12/28/17

4 By: William Wierick
William Wierick, Board Chairperson

5
6
7
8 **IT IS SO ORDERED**

9 Dated: March 1, 2018

Christina A. Snyder

Christina A. Snyder
Judge, U.S. District Court